

Is Poland's President Duda on the Road to Damascus?

VB verfassungsblog.de/is-polands-president-duda-on-the-road-to-damascus/

Marcin Matczak Mi 26 Jul 2017

Mi 26 Jul
2017

Polish President Duda's veto of the government's bills on the judiciary caught both the governing party and the opposition by surprise, and can indeed be seen as something of a miracle. The President's consistent support for all of PiS's previous assaults on the rule of law in Poland had not given much hope for his conversion, yet he found courage to oppose his political benefactors and at least delay their final blow to the independence of his country's judiciary.

The direct consequence of the two vetoes is that the bills on the National Council of Judiciary and on the Supreme Court will not come into force and will instead be returned to the parliament. To remove the vetoes, the government would need to muster a 60% voting majority, with 50% of MPs present in the house. This is politically impossible, unless PiS prevents the opposition from attending the parliamentary ballot.

A second consequence is that the third bill, the one giving the Minister of Justice the right to appoint and dismiss the presidents of the regular courts, now becomes law. Isolated from the remaining two bills, this one may seem less dangerous for the independence of judges; nevertheless, it gives politicians considerable control over the day-to-day work of Polish courts and should have been vetoed as well.

Announcing his decision, Duda said he would supervise the redrafting of the two vetoed bills, and they would be resubmitted for parliamentary deliberations soon. The scope and nature of changes to the bills are unknown. Previous communications from the Presidential Palace suggest that the main tenet of the bill concerning the National Council of Judiciary, namely the parliament's right to appoint its members, will remain, as will the President's previous requirement for a qualified (3/5) parliamentary majority for the appointments.

The new version of the Supreme Court bill is a greater mystery. In his speech announcing the veto, President Duda heavily criticized the Prosecutor General's right to appoint and dismiss judges. Removing this element from the bill will – from PiS's perspective – remove its teeth.

A further mystery is whether Duda's recent vetoes signal a more permanent change in his fidelities to his political stable and to the Constitution; an opportunity to witness the depth of his conversion arises soon. The untimely death of Professor Morawski, one of the anti-judges appointed to the Constitutional Tribunal (CT) by Duda in December 2015, has created a vacancy in the CT which must be filled soon. The big question is with whom: one of the judges legally elected by the previous parliament or a new one, soon to be elected by PiS.

Duda's history with the appointment of CT judges is troubled. First, he swore in the current anti-judges on the night of December 2nd, mere hours before the CT issued a verdict confirming his duty to appoint those elected by the previous parliament. He then refused to appoint those legally elected judges, arguing that he could not have known the content of the verdict of December 3rd, and claiming that no vacancies at the Constitutional Tribunal were available.

Now that the President is fully aware of the verdict, and of the CT vacancy, his decision on this issue will prove whether he truly is on his road to Damascus.

LICENSED UNDER CC BY NC ND

SUGGESTED CITATION Matczak, Marcin: *Is Poland's President Duda on the Road to Damascus?*, *VerfBlog*, 2017/7/26, <http://verfassungsblog.de/is-polands-president-duda-on-the-road-to-damascus/>.